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Elements of a Comparative Study of International Instruments**

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# Settlement of Public International Disputes on Shared Resources: Elements of a Comparative Study of International Instruments<sup>†</sup>

## INTRODUCTION

Among the very many sources of international conflict, conflicts involving natural resources may claim, from an historical perspective, to be the most numerous. Fertile lands, abundant waters, vast forests, and essential locations have always been jealously protected by inhabitants and coveted by invaders. The pressure for environmental goods certainly has not diminished in recent times; rather, it has increased considerably. Recently, natural resources have been the origin of the hottest crises, and will inevitably be the source of future disputes.<sup>1</sup>

The prevention and settlement of disputes are among the main purposes of the law. In a series of articles on the law of transboundary resources, it is quite natural to discuss the settlement of resources disputes, and that is the objective of this article. The problem of resources dispute settlement has not always received its share of attention, because it is one of the most thankless and glamourless themes of environmental law. The concept of settlement implies that, first of all, a dispute has occurred and, thus, settlement is very much "after the fact." For some years now, emphasis has been placed on a preventive approach of nipping environmental disputes in the bud.<sup>2</sup> This article will focus on the subject of resources dispute settlement to ensure the subject is not unduly neglected in this special issue of the *Natural Resources Journal* dealing with transboundary resources. Initially, the only certitude modern international law provides is the basic obligation to seek a peaceful settlement of disputes. This general principle is embodied in *The Charter of the United Nations*,<sup>3</sup> which stipulates: "The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security,

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†The views expressed in this article do not necessarily reflect those of the organization the author has the honor to serve.

1. Biswas, *Shared Natural Resources: Source of Conflict or Springs of Peace?* 13 DEV. FORUM (1982).

2. *Id.*

3. 1 INTERNATIONALES UMWELTRECHT-MULTILATERALE VERGRAGE 945:47/1 (W. Burhenne ed. 1974).

shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice."<sup>4</sup>

This principle of peaceful settlement has been echoed in many international instruments dealing with natural resources. This article will first determine the exact substance and meaning of that principle as applied to shared resources. The second section of this article will examine, both in theory and in practice, the diverse peaceful solutions envisaged by the various provisions of instruments relating to the settlement of resources disputes.

The subject of dispute settlement is extremely broad, even when limited to natural resources. Therefore, a discussion of the definitional limits of this article seems indispensable. A first limitation will apply to the word "settlement," which should be read as "peaceful settlement." A second limitation concerns the word "disputes" which, as indicated in the title, are public international disputes. Even the word "public" will be restricted to cover only disputes between states. However, the lessons which can be learned from settlements of disputes over state contracts should not be neglected.<sup>5</sup> A third limitation relates to the word "resources," which will imply only "shared natural resources." Finally, this article will consider only recent texts which primarily deal with marine resources on a regional level. These texts shall be referred to as "instruments," to avoid participating in the debate of ascertaining what is an agreement in international law.<sup>6</sup> Any limitation, however, is artificial and should not be interpreted to mean that matters undiscussed are less important than those developed in this article.<sup>7</sup>

### THE SEARCH FOR PEACEFUL SOLUTIONS

Peace is very much the heart of the purposes and principles of the United Nations Charter which provides that "All Members shall settle their international disputes by peaceful means,"<sup>8</sup> and that "All Members shall refrain in their international relations from the threat or use of force."<sup>9</sup> Indeed, the U.N. Charter obliges Parties to, first of all, "seek

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4. *Id.*

5. DeLaume, *State Contracts and Transnational Arbitration*, 75 AM. J. INT'L L. 784 (1981).

6. Widdows, *What is an Agreement in International Law?*, 50 BRIT. Y. B. INT'L L. 117 (1979).

7. The choice of regional instruments on marine resources to illustrate the present study was made in view of the numerous recent developments in this sector. *The United Nations Convention on the Law of the Sea* will be referred to when needed, but its very sophisticated dispute settlement mechanisms will not be analyzed here (Dec. 1982); 4 Burhenne, *supra* note 3, at 982:92. See also Caffisch, *Reglement judiciaire et arbitral des differends dans le nouveau droit international de la mer*, BINDESCHIEDLER COLLECTION 351.

8. U.N.CHARTER, art. 2, para 3.

9. *Id.* at art. 2, para 4.

a pacific settlement of disputes.”<sup>10</sup> Still, war is an unfortunate reality and, as such, is a subject for international law.<sup>11</sup> The U.N. Charter does not shy away from the sad reality of war. In fact, the Charter envisages a state of armed conflict by recognizing the right of self-defense in the event of an armed attack.<sup>12</sup> The obligation to seek peaceful solutions, however, is supplemented by the duty of all States to promote a complete and general disarmament.<sup>13</sup> This duty to promote peace has been repeated in many resolutions of the United Nations General Assembly. The most recent examples are resolutions 34/102, 35/160 and 36/110, the latter being entitled, “Peaceful Settlement of Disputes Between States.”<sup>14</sup> At its thirty-seventh session, moreover, the General Assembly adopted resolution 37/10 which approved and attached the *Manila Declaration on the Peaceful Settlement of International Disputes*,<sup>15</sup> [hereinafter referred to as the Manila Declaration]. The General Assembly further urged that all efforts be made so that the Declaration becomes generally known and fully observed and implemented. The Declaration, which had been elaborated by the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, reaffirms the *Declaration of Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations*.<sup>16</sup> The Manila Declaration gives a list of procedures, identical to the one which appears in Article 33 of the Charter, and adds a specific reference to “good offices.”<sup>17</sup>

The United Nations Charter urges Members to seek pacific settlement for local disputes through regional arrangements, before referring them to the Security Council of the United Nations.<sup>18</sup> This is important in the context of resources disputes because most resources disputes on international rivers, shared aquifers, air pollution, and transboundary environment related issues are in fact regional or local.

The principle of pacific settlement for disputes is also found in most

10. *Id.* at art. 33.

11. Aldrich, *New Life for the Laws of War*, 75 AM. J. INT'L L. 764 (1981)

12. U.N. CHARTER, art. 51.

13. Art. 15, The Economic Rights and Duties of States, U.N. General Assembly Resolution 3281, 29 Sess. (1974).

14. U.N. General Assembly Resolutions 34/102 (1979), 35/160 (1980), 36/110 (1981), *Peaceful Settlement of Disputes Between States*.

15. UN General Assembly Resolution 37/10, *Manila Declaration on the Peaceful Settlement of International Disputes* (1982).

16. U.N. General Assembly Resolution 2625 (XXV), annex, *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*.

17. Resolution 37/10 of the Manila Declaration, *supra* note 15.

18. “The Members of the United Nations entering into such arrangements . . . shall make every effort to achieve pacific settlement of local disputes through such regional arrangements . . . before referring them to the Security Council. U.N. Charter, art. 52, para 2.

regional instruments of cooperation. The *Charter of the Organization of American States*<sup>19</sup> calls for a special treaty on pacific settlement. The *Statute of the Council of Europe*<sup>20</sup> is based entirely on the "pursuit of peace," and peaceful settlement of disputes is one of the principles of the *Charter of the Organization of African Unity*.<sup>21</sup>

The obligation to seek pacific solutions for the settlement of disputes is repeated in many recent instruments on marine resources and shared natural resources, as indicated below. It is also contained in several texts of soft law which have covered the use and management of marine and natural resources. The Regional Seas Programme Activity Center of the United Nations Environment Programme (UNEP/RSPAC), in cooperation with specialized agencies, in particular the Food & Agriculture Organization (FAO), the International Maritime Organization (IMO), and the World Health Organization (WHO), gave birth to a series of conventions for the protection and development of regional seas which reinforce the stipulations in Article 33 of the U.N. Charter insofar as peaceful settlement of disputes is concerned. First, the *Convention for the Protection of the Mediterranean Sea against Pollution* provides that contracting parties "shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice."<sup>22</sup> This convention became effective in 1978. Exactly the same terminology is used in the *Regional Convention for Cooperation on the Protection of the Marine Environment from Pollution*,<sup>23</sup> the *Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region*,<sup>24</sup> and the *Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region*.<sup>25</sup> The *Regional Convention for the Conservation of the Red Sea and the Gulf of Aden Environment*<sup>26</sup> imposes on the Parties the obligation to "seek amicable mutual settlement of [their] disputes."

The draft principles of conduct, which were prepared by the United Nations Environment Programme (UNEP) Working Group of Experts on Natural Resources Shared by Two or More States, were finally approved on 24 May 1978 by the sixth session of the Governing Council of UNEP.<sup>27</sup>

19. Art. 23, Charter of the Organization of American States, 1 Burhenne, *supra* note 3, at 948:33/15.

20. Statute of the Council of Europe; 1 Burhenne, *supra* note 3, at 949:34/11.

21. Art. III (4), Charter of the Organization of African Unity; 2 Burhenne, *supra* note 3 at 963:43/12; Amankwah, *International Law, Dispute Settlement and Regional Organizations in the African Setting*, 21(3) INDIAN J. INT'L L. 352 (1981).

22. Art. 22, para 1, Barcelona Convention (1976), 4 Burhenne, *supra* note 3 at 976:13/15.

23. Art. XXV(a), Kuwait Convention (1978), 4 Burhenne, *supra* note 3 at 978:31/22.

24. Art. 24, para. 1, Abidjan Convention (1981), 4 Burhenne, *supra* note 3 at 981:23/19.

25. Art. 23, para 1, Cartagena Convention (1983) (text available from UNEP/RSPAC, Palais des Nations, Geneva).

26. Red Sea/Gulf of Aden (Jeddah) Convention (1982), 4 Burhenne, *supra* note 3 at 982:13/17.

27. Draft principles prepared between 1976-78.

The principles of conduct were transmitted to the U.N. General Assembly which only "took note" of them initially, and referred them to the Governments for comments.<sup>28</sup> Thirty-four Governments expressed their views in writing, and twenty-eight of them recommended adoption.<sup>29</sup> Brazil viewed the draft principles as an "excuse for interference in environmental policies of sovereign States by outsiders";<sup>30</sup> Ethiopia judged them "vague, ambiguous, too general, incomplete and impractical";<sup>31</sup> and Japan expressed doubts "whether UNEP or the UN is the proper forum for dealing with this topic."<sup>32</sup> As a result of these strong criticisms, the General Assembly decided again, in 1979, only to "take note" of the principles.<sup>33</sup> For those who wanted the draft principles to obtain more recognition, there is good news from an International Law Commission report on the non-navigational uses of international watercourses which refers to the very notion of "shared natural resources."<sup>34</sup>

Why did these draft principles on resources dispute settlement trigger such bitter criticism from some nations? The provision to seek peaceful resolution of disputes was nearly omitted from the Principles, not because states found it too advanced or too far reaching, but, on the contrary, some states felt that the repetition of the principle of peaceful settlement of disputes would tend to weaken it. Some states argued that the principle of peaceful resolution of disputes was so obvious and so accepted as a premise of international law that to restate the principle would be impertinent, if not redundant. While there is certainly some merit in this attitude, the Manila Declaration encourages states to conclude agreements for the peaceful settlement of disputes among themselves, as well as to include effective provisions for such settlement in multilateral treaties.<sup>35</sup> More recently, the *United Nations Convention on the Law of the Sea* reaffirmed the principle of pacific settlement of disputes.<sup>36</sup>

Several instruments leave the question of dispute settlement to the first meeting of the contracting parties, without deciding on form or substance of the issue in the text itself, such as the *Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter*.<sup>37</sup> Not all instruments on marine resources mention the question of the settlement of disputes, for several reasons. Either the nature or the contents of the

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28. G.A. Res. 3387 (Vol. #) U.N. GAOR (85th plen. mtg.) (1978).

29. Biswas, *supra* note 1.

30. *Id.*

31. *Id.*

32. *Id.*

33. G.A. Res. 186 U.N. GAOR (107th plen. mtg.) (1979).

34. INT'L L. COMM'N. REPORT A/CN.4/367.

35. Manila Declaration, para. 1.9, *supra* note 15.

36. Arts. 279-85, Part XV, 4 Burhenne, *supra* note 3, at 982:92.

37. Art. XI, Marine Pollution (London, 1972). Entered into force in 1975. 3 Burhenne, *supra* note 3, at 972:96/17.

instrument is unlikely to give rise to disputes, or the text is too general or incomplete to deal with this particular issue.

### THE SOLUTIONS ENVISAGED BY THE TEXTS

Once the principle of the obligation to seek a peaceful settlement of disputes is established, it becomes necessary to look to the procedures of international law which implement this principle. The principle of peaceful settlement of disputes is not an isolated concept in international law. The monotony and uniformity in formulation of the principle contrasts with the wide variety of the nature and effect of the proposed procedures. Peaceful settlement of disputes is intimately supported, supplemented, and reinforced by nations in terms of friendly relations, good neighbourliness, good will, and cooperation.<sup>38</sup> The *raison d'être* of diplomacy and diplomatic relations regards negotiations as the first and most important means of peaceful settlement of disputes.

#### *Negotiation, Good Offices, Mediation*

Negotiation is the first procedure listed in the U.N. Charter,<sup>39</sup> and is widely used to settle disputes on shared resources. Negotiations, in many cases, have been institutionalized by the establishment of joint commissions or other bodies dealing with resources likely to be the source of disputes.<sup>40</sup> Regional instruments dealing with marine resources have designated or created bodies within which negotiations would be handled.<sup>41</sup> The first inquiry of recent treaties on marine resources focuses on whether the relevant treaties imply that negotiation is a prerequisite to other means of peaceful settlement of disputes. The matter is heavily debated by authors who argue the existence or non-existence of the principle of anteriority of diplomatic negotiations.<sup>42</sup> During disputes on marine resources, the International Court of Justice has emphasized the duty of parties to negotiate in good faith in order to reach agreement.<sup>43</sup>

The Jeddah Convention of 1982<sup>44</sup> provides for disputing parties who are unable to settle the dispute to refer the matter to the Council of the regional Organization<sup>45</sup> for its consideration. Institutionalized negotiation,

38. I. POP., VOISINAGE ET BON VOISINAGE EN DROIT INTERNATIONAL (1980).

39. U.N. Charter, art. 33.

40. Food & Agriculture Organization (FAO), *Systematic Index of International Water Resources Treaties, Declarations, Acts, and Cases by Basin* (Legislative Study No. 15) (1978).

41. See, e.g., *infra* notes 46-76 and accompanying text.

42. Geamanu, *Theorie et pratique des negociations en droit international*, 166 RECUEIL COURS, ACADEMIE DROIT INT'L 365 (1980).

43. Fisheries Jurisdiction Case (Federal Republic of Germany v. Ice.) (1974), I.C.J. 201, paras. 65-67; North Sea Continental Shelf Cases (FRG v. Den. & FRG v. Neth.) (1969), I.C.J. 47, para 86.

44. Jeddah Convention, Art. XXIV, para. 2, *supra* note 26.

45. *Id.* at art. XVI(2).

negotiation within the framework of an organization, is very similar to the concept of good offices or mediation, because it supposes the intervention of a third party. Good offices and mediation produce only advisory effects which have no binding character<sup>46</sup> and could, therefore, be considered as ancillary to direct negotiation. The basic difference between good offices and mediation relates to the fact that, in good offices, the third party only provides the conditions for the resumption or continuation of negotiation; while in mediation, the mediator actually participates in the negotiation. Good offices may be converted into mediation at any time, upon the request of the parties. The purpose of both good offices and mediation is to stimulate, rather than replace, direct negotiations.

### *Conciliation, Arbitration*

Conciliation has a non-conflictual nature which is inherent in amicable settlement, as opposed to arbitration which is conflictual. Arbitration may continue if one of the parties fails to appear, whereas mere nonappearance is taken to be a sign of noncooperation which terminates conciliation. Arbitration generally produces binding awards. Conciliation ends in a recommended settlement which must be accepted by the parties.<sup>47</sup> In many conventions, special provisions and annexes are devoted to detailed procedures for dispute settlement or conciliation. Some procedures are compulsory even when national recourse procedures have not been used fully. Thus Article VIII of the *International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties*<sup>48</sup> refers to compulsory procedures including conciliation and arbitration when negotiations have failed. A conciliation commission may be established upon the request of one party and is composed of three members: one representative from each party to the conciliation, and a third member whom the representatives nominate by agreement.<sup>49</sup> None of the conciliators may be a national of the state involved. If the two states fail to nominate their conciliators, the Secretary General of I.M.O. may proceed to the nominations and the Commission will make the recommendations.<sup>50</sup> If conciliation is unsuccessful, or if the recommendations are not followed, a request for arbitration may be made within a period of 180 days following the failure of conciliation.<sup>51</sup> The Arbitration Tribunal is formed in the same way as the Conciliation Commission, with the same possibility of intervention by the Secretary-General of I.M.O. in case of unsuccessful

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46. See Article 6 of the 1907 Convention of the Hague.

47. Dore, *Peaceful Settlement of International Trade Disputes: Analysis of the Scope of Application of the Unilateral Conciliation Rules*, 21 COLUM. J. TRANSNAT'L L. 339 (1983).

48. Brussels, 1969; entered into force in 1975. 3 *Burhenne*, *supra* note 3 at 969:89/14.

49. *Id.* at Annex at 969:89/18, Ch. I, art. 2 and 3.

50. *Id.* at art. 8 at 969:89/20.

51. *Id.* Ch. II, art. 13, at 969:89/21.



outcomes.<sup>52</sup> The award of the Arbitration Tribunal is final and without appeal.<sup>53</sup> Any controversy regarding the interpretation and execution of the award which may arise between the parties may be submitted for judgment by either party to the tribunal which made the award. If the original Arbitration Tribunal is not available, another tribunal constituted for this purpose in the same manner as the original tribunal will hear the case.<sup>54</sup>

Most UNEP regional seas conventions have an arbitration procedure upon common agreement if negotiation or other peaceful means of settlement have failed. The contracting parties also may recognize the arbitration procedure as compulsory *ipso facto* and without special agreement. The Barcelona Convention of 1976 provides for the constitution of an arbitral tribunal consisting of three members, the two appointed by the two parties agreeing on a third arbitrator who shall be the chairman.<sup>55</sup> The chairman shall not be a national of the parties to the dispute, nor have his usual place of residence in the territory of one of these parties.<sup>56</sup> The chairman, moreover, may not be employed by any of the parties nor have been involved with the case in any other capacity.<sup>57</sup> If the first two arbitrators fail to agree on a third arbitrator within two months of the nomination of the second arbitrator, the Secretary-General of the United Nations shall designate the chairman.<sup>58</sup> The Secretary-General may even designate one of the two original arbitrators as chairman if the country concerned does not appoint an arbitrator within two months of receipt of the request. Final decisions to resolve the conflict are taken by majority vote and are final and binding upon the parties. Disputes on interpretation or execution of the award may be submitted to the same tribunal or, when not possible, to another tribunal constituted in the same manner.<sup>59</sup>

The Jeddah Convention of 1982 established a Committee for the Settlement of Disputes<sup>60</sup> to examine disputes on which the Council of the regional Organization has not been able to reach a decision.<sup>61</sup> The composition, terms of reference, and rules of procedure of the Committee are decided by the Council. The Kuwait Convention of 1978,<sup>62</sup> however, does not foresee the necessity of using the good offices of the regional organization. The Kuwait convention provides that a dispute which cannot

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52. *Id.* at art. 15, at 969:89/21.

53. *Id.* at art. 19.1, at 969:89/23.

54. *Id.* at art. 19.2, at 969:89/23.

55. Annexe A, Barcelona Convention, *supra* note 22.

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. Jeddah Convention, *supra* note 26, at art. XVI 2c at 982:13/15.

61. Jeddah Convention, *id.*, at art. XXIV(3) at 982:13/17.

62. Kuwait Convention, *supra* note 23, at art. XVI(a) and para b(iii).

be settled by negotiation shall go directly to the Judicial Commission for the Settlement of Disputes. The composition, terms of reference, and rules of procedure of the Commission shall be established by the Council of the Regional Organization at its first meeting. The Cartagena Convention of 1983<sup>63</sup> follows the Barcelona model almost exactly.

Several instruments leave the determination of the exact conditions for arbitration to the contracting parties. Thus, the Abidjan Convention of 1981<sup>64</sup> provides that arbitration will be subject to conditions to be adopted by the contracting parties in an annex to the Convention. Arbitration may also be left in the hands of permanent or *ad hoc* courts, or individuals. The Treaty of Santiago<sup>65</sup> offers an excellent example of the latter category, and Article 3 of the Treaty provides for arbitration by His British Majesty.<sup>66</sup>

### *Judicial Settlement*

Judicial settlement is another available method for resources disputes resolution. Disputes on shared resources may lead to various causes of action which include: (1) breach of certain obligations under customary international law; (2) breach of obligation arising by virtue of an international agreement; (3) introducing a request for declaration as to the existence of certain legal rights, powers and duties; and (4) a declaration that certain acts are contrary to international law.<sup>67</sup> Some causes of action are particularly applicable to resources disputes. Among them are: (1) the request for a declaration as to the validity of a method of delimiting a fisheries zone; (2) violation of the sovereignty of the state (which obviously includes permanent sovereignty over natural resources); (3) failure to comply with international standards as a basis for state responsibility (and this may include environmental standards); and (4) unlawful confiscation, destruction and detention of property.<sup>68</sup>

Judicial settlement of disputes is not considered an unfriendly act between states.<sup>69</sup> So much the better, for if judicial settlement were considered an inimicable act, international agreements providing for judicial settlement could not be considered a measure of good international cooperation; yet, obviously, they are. One third of all international agreements contain compulsory dispute settlement clauses.<sup>70</sup>

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63. Cartagena Convention, *supra* note 25.

64. Abidjan Convention, *supra* note 24, at Art. 24, para. 2.

65. Treaty of Santiago between Argentina and Chile, 22 May 1902.

66. Treaty of Santiago, *id.* at Art. 3. Duteil de la Rochere, L'Affaire du Canal de Beagle (*Sentence rendue par la Reine d'Angleterre le 22 avril 1977*), XXIII ANNUAIRE FRANCAIS DROIT INT'L 408 (1977).

67. Brownlie, *Causes of Action in the Law of Nations*, 50 BRIT. Y.B. INT'L L. 13 (1979).

68. *Id.*

69. Para. II 5. *in fine* of the Manila Declaration, *supra* note 15.

70. According to a survey of vol. 588-799 of the U.N. Treaty Series undertaken by the U.N. Secretariat.

In practice, states not uncommonly still prefer to bring their dispute to an *ad hoc* arbitral forum rather than settling it in well established courts. Thus, France and the United Kingdom chose arbitration in their dispute on the territory and resources of the Iroise Sea, whereas they could have gone either to the International Court of Justice (ICJ) or to the Court of Justice of the European Communities.<sup>71</sup>

An interesting question, particularly relevant to resource disputes, is whether the various procedures of peaceful settlement of disputes should imply a suspension of all actions which are at the origin of the disputes. The answer is partially provided by the Manila Declaration which stipulates that states which are parties to an international dispute shall refrain from any action which may aggravate the situation, endanger the maintenance of international peace, and make the peaceful settlement of the dispute more difficult.<sup>72</sup>

One may wonder if, with all of the newly created courts and tribunals to handle resources disputes, any such disputes will ever reach the ICJ in the future. The Manila Declaration provides that it is desirable for states to "consider the possibility of inserting in treaties, whenever appropriate, clauses providing for the submission to the ICJ of disputes which may arise from the interpretation or application of such treaties."<sup>73</sup> But two weeks after the adoption of the Manila Declaration by the General Assembly, the United Nations Convention on the Law of the Sea was opened for signature and both instruments bypassed the ICJ to resolve marine disputes. The call of the Manila Declaration was so mild that it has not been heard.

## CONCLUSION

Peaceful means of procedures to settle resources disputes are available: direct negotiations, good offices, mediation, enquiry and conciliation, consultation, arbitration, and judicial settlement.

It is still premature to forecast whether the trend in negotiation of international instruments by consensus<sup>74</sup> will have an influence on the number of disputes regarding the interpretation of texts. Most conventions which have been reviewed are recent, and the dispute settlement mech-

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71. Zoller, *L'Affaire de la Delimitation du Plateau continental entre la Republique francaise et le Royaume-Uni de Grande Bretagne et d'Irlande du Nord (Decision du 30 juin 1977)*, XXIII ANNUAIRE FRANCAIS DROIT INT'L 359 (1977).

72. Manila Declaration, *supra* note 15, at operative para. I 8.

73. *Id.*

74. "Following the experience of the Third United Nations Conference on the Law of the Sea, where the technique of consensus was systematically used." Buzan, *Negotiating by Consensus: Developments in Technique at the United Nations Conference on the Law of the Sea*, 75 AM. J. INT'L L. 324 (1981).

anisms provided for by the UNEP regional conventions have not been tested in practice.

In view of the small incidence of cases conducted before the ICJ or before *ad hoc* tribunals involving non-appearing defendant governments, it seems that judicial settlement of disputes is not well accepted by the international community.<sup>75</sup> One should not, however, underestimate the dissuasive nature of a judicial settlement procedure with binding effects. The fact that judicial or arbitration courts generally have little work, with few cases reaching them, may prove that parties to instruments recognizing the jurisdiction of such courts will rather settle their natural resources disputes differences out of court.<sup>76</sup>

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75. Sinclair, *Some Procedural Aspects of Recent International Litigation*, 30 INT'L COMP. L.Q. 338 (1981).

76. DeLaume, *State Contracts and Transnational Arbitration*, 109 J. DROIT INT'L 775 (1982).